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From:

Sent: Friday, August 28, 2009 4:51:35 PM

To:

Cc:

Subject: RE: RA question

I forwarded this e-mail to [REDACTED], but he has not yet had a chance to review this before leaving for vacation this week. We did discuss the possibility of addressing this issue in the next update of the Reporting Agent revenue procedure. I'm hoping he will address these issues with you when he returns from vacation.

As it stands, Section 6.03 of Rev. Proc. 2007-38 currently provides that "Except to the extent provided in section 6.04 of this revenue procedure, an Authorization will remain in effect until the Service receives a revocation of the Authorization or a new Authorization or a Reporting Agent is suspended." Section 6.04 deals with electronic filing and is not relevant to this analysis.

But I believe that the authority of a reporting agent to act on behalf of a principal is governed generally by principal/agency common law and state law. And under common law, as exemplified in this excerpt from Restatement (Third) of Agency section 3.06, "An agent's actual authority may be terminated by: (1) the agent's death, cessation of existence or suspension of power ... or ... (6) the occurrence of circumstances specified by statute.

Section 3.07(3) of Restatement (Third) of Agency provides: "When an agent that is not an individual ceases to exist or commences a process that will lead to cessation of or existence or when its powers are suspended, the agent's actual authority terminates except as provided by law."

Comment C of this section continues "The circumstances under which a person that is not an individual ceases to exist are governed by the legal regime by virtue of which the person has legal personality. Organizational statutes often specify the degree to which there is authority to take actions on behalf of an organization that has commenced the process that will culminate in cessation of its existence."

Thus, the dissolution of the agent would terminate the principal/agency relationship, subject to any time periods or provisions governed by state law under which the agent was organized. But I don't believe that a mere change of name, if the agent is not dissolved, would in itself terminate the principal/agency relationship, especially if the same FEIN is retained.

[REDACTED]